

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1782 of 2003

WITH

CIVIL APPLICATION No 6667 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE KSHITIJ R.VYAS

and

HON'BLE MR.JUSTICE AKSHAY H.MEHTA

- =====
1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgements?
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
  4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the concerned : NO  
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

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OIL & NATURAL GAS CORP.LTD.

Versus

PATEL JAYANTIBHAI JETHABHAI  
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Appearance:

1. First Appeal No. 1782 of 2003  
MR RR MARSHALL for Petitioner No. 1  
..... for Respondent No. 1  
MR NK MAJMUDAR for Respondent No. 2,2-3
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CORAM : HON'BLE MR.JUSTICE KSHITIJ R.VYAS

and

HON'BLE MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 29/09/2003

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE KSHITIJ R.VYAS)

Admit. Mr. Majmudar, learned counsel for the respondents waives service of notice of admission.

With the consent of the parties, the matter is heard today.

2. The appellant - ONGC has filed this appeal u/S.96 of the Code of Civil Procedure against the judgment and order dated 20/2/2003 passed by the learned 6th Joint Civil Judge [S.D.] in Special Civil Suit No. 23 of 1998, whereby the suit filed by the respondents came to be partly decreed. The learned Judge declared that the appellant's possession of the suit land after 2/6/1992 is illegal and there was no right to the appellant-defendant to retain the possession of the suit land and to utilize the same. The learned Judge also held that the respondents-plaintiffs are entitled to get Rs.2,93,238/= at the rate of Rs.600/= per Are of the suit land from 2/3/1995 to 2/3/1998 i.e. period of 3 years preceding from the date of suit by way of compensation alongwith interest at the rate of 9% p.a. from the date of suit till its realization from the appellant-defendant. The learned Judge also held that the respondents are entitled to get Rs.600/= per Are of the suit land from the appellant as compensation till such time defendant retain the possession of the suit land. As far as the relief of restoration of the possession of the suit land is concerned, the learned Judge did not grant it to the respondents.

3. Learned counsel Mr. Marshall appearing for the appellant submitted that the trial Court has committed an error in awarding Rs.2,93,238/= at the rate of Rs.600/= per Are by increasing the said amount from Rs.80/=. It is submitted by the learned counsel for the appellant that in absence of any material produced on record by the respondents, there was no justification to increase the amount by the learned Judge. Mr. Majmudar, learned counsel appearing for the respondents on the other hand submitted that he is in full agreement with the reasonings given by the trial Court.

4. From the pleadings of the parties, it appears that the suit land is of the ownership of the respondents which is acquired by the appellant temporarily for a period of one year. The appellant agreed to pay Rs.80/= per Are i.e. Rs. 1920/= per Vigha by way of rent per annum. The parties agreed to this understanding till the

land remains in possession of the appellant. It further appears that the respondents' grievance is that even though the appellant retained the possession of the suit land since 1992, the amount of rent is quite inadequate; particularly in view of the fact that they are taking all seasonal crops including the cash crops, they are suffering heavy economic loss and hence they are entitled to Rs.1,000/= per Are by way of rent in place of Rs.80/= per Are per annum. Accordingly, the respondents filed the present suit, wherein they claimed Rs.4,88,730/= for illegal retention of the possession of the land by the appellant.

4.1. From the record it appears that the evidence has been led regarding the price of the land in question. The plaintiff no. 2 - Dashrathbhai Jethabhai Patel has stated in his evidence at Exh. 25 that the land is fertile land and that the plaintiffs are taking all season crops including cash crops and that they are getting Rs.25,000/= per Vigha as crop earning. He has produced Pani Patrak of the suit land as well as other lands at Exhs. 32 to 35. In Exh. 63 the details about the crop compensation is shown.

4.2. In spite of this, the trial Court in para. 25 of its judgment has observed as under :-

"25. That in this case it is true that in order to get the increase in the rent per are plaintiffs have produced only pani patraks of their lands but they have not produced any concrete, reliable and cogent documentary evidence with regard to the actual receipt of the agricultural income, actual expenses incurred for the agriculture and accounts of crops, market price of crops, etc. and therefore, in the absence of the said documentary evidence it is very difficult for the court to arrive on a proper decision with regard to the actual damages caused to the plaintiffs. Howsoever when it is held that the rent paid by the defendant to the plaintiffs are inadequate and looking to the pani patraks and the panchnama and details of crop compensation, as per my opinion, if lumpsum of Rs.600/= is granted per are rent to the plaintiffs then definitely it will meet the end of justice and therefore, I award Rs.600/= per Are rent to the plaintiffs by way of compensation and accordingly I am of the opinion that in all plaintiffs are entitled to get Rs.2,93,238/= from the defendant as against the damages or for the

compensation for the period of three years i.e. from 02/03/1995 to 02/03/1998 and the plaintiffs are also entitled to get Rs.600/= per Are by way of compensation till such time defendant retain the possession of the suit land."

4.3. From the above reasoning, it is clear that in absence of sufficient evidence on record, the trial Court has awarded a lumpsum rent of Rs.600/= per Are to the plaintiffs for a period of 3 years. We are not expressing any opinion regarding the said conclusion arrived at by the trial Court. However, we do feel that with the passage of time, from the date on which the agreement between the parties was executed for the retention of the lands by paying Rs.80/= per Are, the rent of the land is bound to show upward trend.

5. In absence of adequate evidence on record, whether increase of the rent to Rs.600/= per Are is justified is difficult to say. It is a matter to be decided on the basis of proper and cogent evidence and for that purpose, we are of the opinion that if the following directions are given, the same shall meet with the ends of justice :-

I. The matter is remanded back to the trial Court.

Both the parties shall lead fresh evidence to justify whether increase in the rent of their land is necessary and what would be the just and proper rent of the land in question. The trial Court shall reconsider its decision by reappreciating the evidence on record and fresh evidence that may be led by the parties and shall decide the above question in accordance with law. Considering the fact that the appellant - ONGC is using the land in question since 1992, we direct the appellant to deposit the amount of Rs.2,93,238/= i.e. the amount which respondents are entitled to receive as per trial Court's decree contained in operative portion of the judgment and permit the respondents-plaintiffs to withdraw the same unconditionally. It is however, made clear that the above directions may not be treated that this Court has accepted Rs.600/= per Are being the just and adequate amount of rent of the land in question. This direction may be treated as interim arrangement. Needless to say that the trial Court shall decide the matter afresh without in any manner being influenced by the observations made in this order or the directions given hereinabove.

II. Since we have permitted the respondents to withdraw Rs.2,93,238/= at the rate of Rs.600/= per Are as rent of the suit land from 2/3/1995 to 2/3/1998 i.e. the period of 3 years with interest @ 9% p.a., it is not necessary for us to confirm other relief granted by the trial Court, namely that the respondents are also entitled to get Rs.600/= per Are of the suit land from the defendant as compensation till such time the defendant retain possession of the suit land, at this stage, as the said relief can be granted by the trial Court on the basis of the finding that may be arrived at after appreciation of proper evidence.

III. Subject to the directions given above, the finding recorded by the trial Court, namely that the rent of the land in question at Rs.600/= per Are, is set aside and to that extent the appeal is allowed. Order accordingly. No order as to costs.

IV. The trial Court shall decide the matter by 31st March, 2004.

As the main appeal is allowed, Civil Application for stay shall stand disposed of accordingly.

[ KSHITIJ R. VYAS, J.]

[ AKSHAY H. MEHTA, J.]

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